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## BEFORE THE BOARD OF PATENT APPEALS
## AND INTERFERENCES

Application Number: 09/534,708
Filing Date: March 24, 2000
Appellant(s): ARSENAULT ET AL.

Michael W. Zimmerman
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed August 09, 2007 appealing from the Office

action mailed January 24, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| US 2001/0056577 A1 | Gordon et al. | 12-2001 |
| 5,381,477 | Beyers, II et al. | 1-1995 |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 28-30, and 32-47 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Gordon by US 2001/0056577A1 in view of Beyers, II et al. (US

5381477).

Claim 28, Gordon discloses a method of broadcasting TV content and program

guide data (Fig. 1 and 2), the TV content (video sources) divided into a plurality of TV

channels (i.e., FOX... page 6,sect. 0065), each TV channel constructed from at least

one content component (page 6, sect. 0065), the program guide data including multiple

channel objects (page 5, sect. 0050), each channel object (Fig. 1, el. 135; Fig. 11-14, el.

610-1..8), associated with one of the TV channels (Fig. 11A-14; i.e. CNN associates

with channel 5), each channel object (TV program Icons, i.e. CNN), including at least

one channel definition (i.e., video PID) that identifies the channel content components

needed to construct the TV channel associated with that channel object for display

(page 16, sect. 0155-0156 and page18, section 0184), wherein the method comprising:

Providing the TV content and the program guide data (Fig. 4);

Adding conditional logic to channel objects (page 9, sect.0088) that include more

than one channel definition ("conditional logic" reads on Gordon's arranging bitmap

information in different data blocks descriptors contain entitlement "locks" to

corresponding channel object , i.e., PPV, VOD or subscription services like HBO,

Showtimes, etc... see page 8, sect. 0085-0087 and page 9, section 0088 that include

more than one channel definition, i.e., tile of the video program,  that is allow displaying

on the TV because Gordon' s arranged bitmap information is used to identify what types

of access is allowed by comparing "locks" with a series of "keys" stored at the STB so to

indicate what type of channels that user is entitled to receive for viewing for a particular

STB . In doing so, Gordon receiver inherently uses conditional logic expression, i.e.

Boolean, to evaluate the "conditional logic" based on the receiver unique terminal

identification, see page 7 at § 0070) the conditional logic that must be evaluated by a

receiver to identify a 1$^{st}$ channel definition or a 2$^{nd}$ channel definition, the 1$^{st}$ channel

definition being associated wit a 1$^{st}$ video component or a 1$^{st}$ audio component, and the

2$^{nd}$ channel definition being associated with a 2$^{nd}$ video component or a 2$^{nd}$ audio

component (the receiver with its unique terminal identification (page 7, sect. 0070)

identifies which channel definition associates with corresponding channel object that is

allow displaying on the TV, i.e., PPV, VOD or subscription services like HBO,

Showtimes, etc... see page 8, sect. 0085-0087 and page 9, section 0088);

Combining the TV content and the program guide data into an output stream

(Fig. 4, el. 450); and broadcasting the output stream to a plurality of receivers (page 6,

sect. 0062-page 7, sect. 0070).

Gordon does not specifically disclose that the conditional logic is evaluated by

the receiver based on receiver characteristics data representing a characteristic of the

receiver.

Beyers discloses the conditional logic including one or more rule that must be

evaluated by the receiver based on receiver characteristics data representing a

characteristic of the receiver (see Col. 9, lines 9-37). Therefore, it would have been

obvious to one of ordinary skill in the art at the time the invention was made to modify

Gordon to include one or more rule that must be evaluated by the receiver based on

receiver characteristics data into the conditional logic, as taught by Beyers, so to permit

the system operator to able to target individual subscribers for inclusion in groups by

means of certain selection criteria which characterizes a group, logically linking the

criteria in a predetermined manner to form a group criteria definition statement,

comparing the stored terminal criteria with the criteria definition statement, and

assigning an individual or group of terminals to the group, as suggested by Beyer (Col.

2, lines 42-65+).


Claim 29, Gordon further discloses wherein one of the conditions contained in

the conditional logic of a channel object is further based on subscription data

representing channels to which a user subscribes (page 8, sect. 0084-0088).


Claim 30, Gordon further discloses wherein one of the conditions contained in

the conditional logic of a channel object is further based on selection history data

representing programs that a user has previously watched (page 9, sect 0098; page 15,

sect 0144-0148; page 17, sect.0174).


Claim 32, Gordon further discloses wherein the receiver characteristic data

includes geographic location data representing a specific geographic location, and one

of the conditions contained in the conditional logic of a channel object is based on the

geographic location data (page 9, sect. 0098).

Claim 33, Gordon (page 7, sect. 0070) in view of Beyer (col. 17, lines 25-31; Col. 33, lines 44-Col. 38-14) further discloses wherein the receiver characteristics data includes at least one identification code that uniquely identifies a receiver, and one of the conditions contained in the conditional logic of a channel object is based on the identification code.

Claim 34, Gordon (page 5, section 0057-059; page 8, sect. 0085 and page 10, sect 0102) in view of Beyer (col. 17, lines 25-31; Col. 33, lines 44-Col. 38-14) further discloses wherein the conditions contained in the conditional logic of a channel object is based on both the current time at the site of the receivers and subscription data representing channels to which users of the receivers subscribe.

Claim 35, Gordon (page 5, section 0057-059; page 8, sect. 0085 and page 10, sect 0102) in view of Beyer (col. 17, lines 25-31; Col. 33, lines 44-Col. 38-14) wherein one of the conditions contained in the conditional logic of a channel object associated with a pay per view television channel is further based on the current time at the site of the receivers and pay per view purchase data representing pay per view programs that have been ordered by a user.

Claim 36, Gordon discloses a method of receiving television content and program guide data that is broadcast from a television broadcasting station (Fig. 2), the

TV content (video sources) divided into a plurality of TV channels (i.e., FOX... page

6,sect. 0065), each TV channel constructed from at least one channel content

component (video encoder of Fig. 4; page 6, sect. 0065), the program guide data

including multiple channel objects (page 5, sect. 0050), each channel object (Fig. 1, el.

135; Fig. 11-14, el. 610-1..8) associated with one of the TV channels (Fig. 11A-14; i.e.

CNN associates with channel 5), each channel object (TV program Icons, i.e. CNN),

including at least one channel definition (i.e., video PID) that identifies the channel

content components including a video component or an audio component needed to

construct the TV channel associated with that channel object for display (page 16, sect.

0155-0156 and page18, section 0184), each channel object with more than one channel

definition including conditional logic ("conditional logic" reads on Gordon's arranging

bitmap information in different data blocks descriptors contain entitlement "locks" to

corresponding channel object , i.e., PPV, VOD or subscription services like HBO,

Showtimes, etc... see page 8, sect. 0085-0087 and page 9, section 0088 that include

more than one channel definition, i.e., tile of the video program,  that is allow displaying

on the TV because Gordon' s arranged bitmap information is used to identify what types

of access is allowed by comparing "locks" with a series of "keys" stored at the STB so to

indicate what type of channels that user is entitled to receive for viewing for a particular

STB . In doing so, Gordon receiver inherently uses conditional logic expression, i.e.

Boolean, to evaluate the "conditional logic" based on the receiver unique terminal

identification, see page 7 at § 0070), the method comprising:

Receiving the TV content and the program guide data by a receiver station that includes a receiver;

Storing the program guide data in a memory 276 (sect. 0092);

Receiving a tuning request that selects a TV channel (page 3, sect. 0036);

Responding to the tuning request by evaluating the conditional logic (Gordon's arranged bitmap information is used to identify what types of access is allowed by comparing "locks" with a series of "keys" stored at the STB so to indicate what type of channels that user is entitled to receive for viewing for a particular STB . In doing so, Gordon receiver inherently uses conditional logic expression, i.e. Boolean, to evaluate the "conditional logic" based on the receiver unique terminal identification, see page 7 at § 0070); and

Generating an output of the selected TV channel, the output including the channel content components identified by the 1$^{st}$ channel definition or the 2$^{nd}$ channel definition (page 5, sect-0056-page 6, sect. 0060 and page 7, sect.0075).

Gordon does not specifically disclose that the conditional is evaluated by the receiver based on receiver characteristics data representing a characteristic of the receiver.

Beyers discloses the conditional logic including one or more rule that must be evaluated by the receiver based on receiver characteristics data representing a characteristic of the receiver (see Col. 9, lines 9-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gordon to include one or more rule that must be evaluated by the receiver based on

receiver characteristics data into the conditional logic, as taught by Beyers, so to permit

the system operator to able to target individual subscribers for inclusion in groups by

means of certain selection criteria which characterizes a group, logically linking the

criteria in a predetermined manner to form a group criteria definition statement,

comparing the stored terminal criteria with the criteria definition statement, and

assigning an individual or group of terminals to the group, as suggested by Beyer (Col.

2, lines 42-65+).


Claim 37 system/apparatus claim is analyzed with respect to method claim 36.


Claims 38-40, Gordon (page 8, sect. 0087-0088; page 9, sect. 0095-0098) in

view of Beyer (Col. 30-Col. 38, lines 14) further discloses wherein the 1st channel

definition comprises a channel definition defining channel content components

associated with a user who have purchased a program or an event, and wherein the 2nd

channel definition comprises a channel definition defining channel content components

associated with a user who have not purchased a program or an event.


Claim 41, Gordon in view of Beyer (Col. 33, lines 44-63) further discloses

wherein the receiver characteristics data representing the characteristic of the receiver

indicates a model number associated with a receiver.

Claim 42, Gordon in view of Beyer (Col. 15, lines 27-46; Col.35, lines 55- Col. 38,

lines 14 in which the operator is freely to configure the selection criteria statement

accordingly to the needs) wherein the conditional logic instructs the receiver to select

the first channel definition if the model number is greater than a predetermined number

and instructs the receiver to select the second channel definition if the model number is

less than the predetermined number.

Claim 43, Gordon in view of Beyer (Col. 15, lines 27-46; Col.35, lines 55- Col. 38,

lines 14 in which software capability reads on one of the subscriber terminal

criteria/attribute/service code, as shown in various table of Fig. 9A-10B) wherein the

receiver characteristics data representing the characteristic of the receiver indicates

whether or not the receiver includes a software capability.

Claim 44, Gordon in view of Beyer (receiver characteristics data indicates

whether or not that receiver includes a hardware component, see Col. 25, lines 5-14)

wherein the receiver characteristics data representing the characteristic of the receiver

indicates whether or not that receiver includes a hardware component.

Claim 45, Gordon in view of Beyer (receiver characteristics data indicates a

status of the receiver, see Col. 25, lines 5-14) wherein the receiver characteristics data

representing the characteristic of the receiver indicates a status of the receiver.

Claim 46, Gordon in view of Beyer (Col. 33, lines 45-53) wherein the receiver

characteristics data representing the characteristic of the receiver indicates a model

number associated with a receiver.

Claim 47, Gordon in view of Beyer (Col. 33, lines 45-53) wherein the system

characteristics data representing the characteristic of the system indicates a model

number associated with the system.

**(10) Response to Argument**

Appellant argues with respect to claims 28-30 and 32-47 that Beyers does not

disclose or suggest conditional logic including one or more rules that must be evaluated

by a receiver based on receiver characteristics data representing a characteristic of the

receiver. However, reading the claims in the broadest sense, Beyers does meet that

limitation in the claims.

Beyers clearly discloses the conditional logic including one or more rule that must

be evaluated by the receiver based on receiver characteristics data representing a

characteristic of the receiver (see Col. 9, lines 9-37, for example the examiner cites "...

Transaction Type A is of finite length and may be considered to comprise a data

packets of a plurality of bytes in a particular sequence and including at least apportion

of a data stream which may *have a transaction code* associated therewith... Message

data for display on an addressable subscriber terminal may be transmitted to

subscribers using these transactions. Depending on the length of the messages, *the*

*characteristic of the subscriber terminals* and the scramblers and other factors, *the*

<u>particular length and arrangement of message data within these transactions may be</u>

<u>varied to suit the particular configuration.)</u>

A transaction code or operand provides a command or instruction that the

subscriber terminal (or terminals) addressed by the transaction is to follow. The

depicted data is for operation according to the operand or transaction code. The

transaction code is considered the conditional logic because the addressable terminals

(or receivers) judges whether the transaction code address is addressed to the terminal

or not. If the transaction code is addressed to the particular terminal, then the terminal

will carry out (or evaluate) the commands or instructions (or one or more rules) carried

by the transaction code. The commands or instructions are sent to the terminal based

on the receiver characteristics (see Beyer Col. 9, lines 9-37).

## (11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.
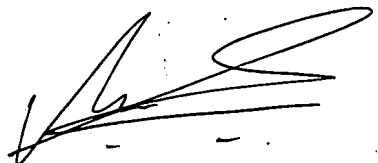
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